MONTANA LEGISLATIVE HISTORY

Chapter 644 19 91

Bill H _____ S 211 Original bill & history ✓ C

H. Committee on Natural Res.

Hearing Date(s) 3-14 ✓ C

_____ ____C

_____ ____C

_____ ____C

Date Out _____ ____C

S. Committee on Natural Res.

Hearing Date(s) 2-8 ✓ C

_____ ____C

_____ ____C

_____ ____C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 208 INTRODUCED BY NATHE, ET AL.
AUTHORIZE CARD GAME OF 21

1/26	INTRODUCED		
1/28	REFERRED TO JUDICIARY		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL NOT PASSED		
2/12	ADVERSE COMMITTEE REPORT ADOPTED	33	14
2/13	MOTION FAILED TO RECONSIDER ADOPTION OF ADVERSE COMMITTEE REPORT	25	25

SB 209 INTRODUCED BY YELLOWTAIL, ET AL.
REQUIRE SOLID WASTE MANAGEMENT SYSTEM BE LICENSED ANNUALLY BY DEPARTMENT OF HEALTH
BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

1/26	INTRODUCED		
1/28	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/11	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	31	18
2/26	3RD READING PASSED	37	12
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/19	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	2ND READING CONCURRED	78	21
4/06	3RD READING CONCURRED	73	23
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING AMENDMENTS CONCURRED	41	8
4/23	SIGNED BY PRESIDENT		
4/23	SIGNED BY SPEAKER		
4/23	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 643	EFFECTIVE DATE: 7/01/91	

SB 210 INTRODUCED BY YELLOWTAIL, ET AL.
GEOTHERMAL RESOURCES ACT

1/26	INTRODUCED		
1/28	REFERRED TO NATURAL RESOURCES		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/06	HEARING		
2/19	TABLED IN COMMITTEE		

SB 211 INTRODUCED BY HARP
INCREASE MAXIMUM PENALTIES FOR WATER QUALITY ACT VIOLATIONS

1/26	INTRODUCED		
1/28	REFERRED TO NATURAL RESOURCES		

1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/08	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	48	1
2/25	3RD READING PASSED	43	6
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/14	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED	81	12
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	87	10
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING AMENDMENTS CONCURRED	44	5
4/23	SIGNED BY PRESIDENT		
4/23	SIGNED BY SPEAKER		
4/23	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 644	EFFECTIVE DATE: 10/01/91	

SB 212 INTRODUCED BY BIANCHI, ET AL.
INSTREAM FLOW ACT OF 1991

1/26	INTRODUCED		
1/28	REFERRED TO NATURAL RESOURCES		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/15	HEARING		
2/16	SPONSOR WITHDREW		
2/19	TABLED IN COMMITTEE		

SB 213 INTRODUCED BY TOWE
REVISE METHOD OF NOTICE FOR PROPERTY TAX DEEDS

1/26	INTRODUCED		
1/28	REFERRED TO TAXATION		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/06	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING DO PASS MOTION FAILED	18	29
2/14	2ND READING INDEFINITELY POSTPONED	33	15

SB 214 INTRODUCED BY TOWE
INCREASE DOLLAR AMOUNT SUBJECT TO CIVIL JURISDICTION IN CERTAIN COURTS

1/26	INTRODUCED		
1/28	REFERRED TO JUDICIARY		
1/28	FIRST READING		
2/20	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	49	0
2/22	3RD READING PASSED	49	0

Senate BILL NO. 211

INTRODUCED BY HARP

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, PART 6, MCA; PROVIDING THAT PENALTIES AND COSTS RECOVERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES UNDER TITLE 75, CHAPTER 5, PART 6, MCA, MUST BE DEPOSITED IN THE ENVIRONMENTAL QUALITY PROTECTION FUND; AND AMENDING SECTIONS 75-5-631, 75-5-633, 75-5-634, 75-5-635, AND 75-10-704, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed ~~$10,000~~ $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state."

Section 2. Section 75-5-633, MCA, is amended to read:

"**75-5-633. Penalties for false statements and falsifying monitoring.** Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than ~~$10,000~~ $25,000 or by imprisonment for not more than 6 months, or both."

Section 3. Section 75-5-634, MCA, is amended to read:

"**75-5-634. Fines to go to general** environmental quality protection **fund.** Fines collected, except those collected in a justice's court, shall be deposited to the ~~state--general~~ environmental quality protection fund established in 75-10-704."

Section 4. Section 75-5-635, MCA, is amended to read:

"**75-5-635. Costs and expenses -- recovery by department.** In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the

INTRODUCED BILL SB 211

adverse effects upon water quality resulting from the unauthorized discharge of pollutants. Costs and expenses recovered by the department under this section must be deposited in the environmental quality protection fund established in 75-10-704."

Section 5. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of Title 75, chapter 5, part 6, and this part.

(2) The fund may be used by the department only to carry out the provisions of Title 75, chapter 5, part 6, and this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances. The department may use money that is deposited in the fund pursuant to subsection (4)(a) only to carry out the purposes of this part. The department may use money that is deposited in the fund pursuant to subsection (4)(b) only to carry out the purposes of Title 75, chapter 5, part 6.

(3) The department shall:

(a) establish and implement a system for prioritizing

sites for remedial action under this part based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate under this part, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) for the purposes of this part:

(i) all penalties, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

~~(b)~~(ii) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

~~(c)~~(iii) funds appropriated to the fund by the legislature; and

~~(d)~~(iv) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202; and

(b) for the purposes of Title 75, chapter 5, part 6:

(i) all penalties collected under Title 75, chapter 5, part 6; and

(ii) all investigation and monitoring costs and department expenses recovered pursuant to 75-5-635.

(5) Whenever a legislative appropriation is

insufficient to carry out the provisions of Title 75, chapter 5, part 6, or the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action under this part, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0211, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill increasing the maximum penalties that may be assessed for violations of 75-5-6, MCA, and providing that penalties and costs recovered by the Department of Health and Environmental Sciences under 75-5-6, MCA, must be deposited in the environmental quality protection fund.

ASSUMPTIONS:

1. SB0211 would not appreciably change accounting workloads.

FISCAL IMPACT:

None.

2-1-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/2/91
JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0211, as introduced.

SB 211

CHAIRMAN--LAWRENCE STIMATZ
SECRETARY-ROBERTA OPEL
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M,W,F TIME: 3:00 P.M.

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0018	1/11	1/18		PASS AS AMENDED		1/24
GAGE, DEL			REVISING OIL AND GAS POOLING LAW; RESPONSIBILITY FOR MITIGATION OF DAMAGES			
SB0094	1/15	1/28		PASS AS AMENDED		2/14
BECK, TOM			ESTABLISH GROUND WATER CHARACTERIZATION AND MONITORING PROGRAMS			
SB0114	1/17	1/25		DO PASS		2/08
WEEDING, CECIL			LOCAL REFERENDUM ON SITING OF A MEGALANDFILL			
SB0133	1/18	2/01		ADVERSE RPT ADOPT		2/14
NATHE, DENNIS			EXEMPT FROM REGULATION UNDERGROUND TANKS OF 1100 GALLONS OR LESS CAPACITY			
SB0136	1/18	2/13		PASS AS AMENDED		2/21
BECK, TOM			AUTHORIZE COUNTIES TO CREATE LOCAL WATER QUALITY DISTRICTS			
SB0139	1/18	1/25		DO PASS		1/29
GROSFIELD, LORENTS			AUTHORIZE CONSERVATION DISTRICT SUPERVISORS TO INVEST ALL SURPLUS FUNDS			
SB0165	1/22	2/01		PASS AS AMENDED		2/07
HARP, JOHN			INCREASING MAXIMUM ASSESSMENT IN FOREST LAND FIRE PROTECTION DISTRICTS			
SB0193	1/25			TABLED		
HALLIGAN, MIKE			ESTABLISHING A FORESTRY INCENTIVES PROGRAM			
SB0210	1/28	2/06		TABLED		
YELLOWTAIL JR., BILL			GEOTHERMAL RESOURCES ACT			
SB0211	1/28	2/08		PASS AS AMENDED		2/21
HARP, JOHN			INCREASING PENALTIES FOR WATER QUALITY ACT VIOLATIONS			
SB0212	1/28	2/15		TABLED		
BIANCHI, DON			INSTREAM FLOW ACT OF 1991			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Vice-Chairman Cecil Weeding, on February 8, 1991, at 3:00 p.m.

ROLL CALL

Members Present:
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: Chairman Lawrence Stimatz (D)
Vice-Chairman Cecil Weeding (D)

Staff Present: Michael Kakuk (EQC).
Roberta Opel, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

There were no announcements.

HEARING ON SB 211

Presentation and Opening Statement by Sponsor:

Senator John Harp appeared before the committee to present SB 211. SB 211 is presented with no other interest group in mind except myself, Harp told the committee. As a legislative member of the Environmental Quality Council (EQC) and after experiencing problems with "a very few people," (in the mining and timber industry), I believe we need to consider a higher penalty for people who violate water quality standards." Harp stated that he felt "compelled" to raise the civil penalties from $10,000 to $25,000. Harp said that he hoped the provisions for leveling

increased fines within SB 211 would "start to make examples of people who continue to disregard water quality." Harp continued by saying that he would like the fines to go toward the Environmental Quality Protection Fund (EQPF) rather than the General Fund.

Proponents' Testimony:

Kevin Keenan, Environmental Enforcement Officer for the Water Quality Bureau, Department of Health and Environmental Sciences, appeared in support of SB 211. (SEE EXHIBIT #1).

Stan Bradshaw appeared on behalf of Trout Unlimited in support of SB 211. Bradshaw told the committee that he felt the likelihood of collecting a $25,000 would be "relatively rare". Bradshaw said he felt, however, that it was good to have the penalty section of this bill conform with federal law. Bradshaw proposed an amendment to SB 211. (SEE EXHIBIT #2).

Jane Lopp, Chairman of the Flathead County Health Board, appeared in support of SB 211. Lopp told the committee that, considering inflation, "perhaps the $25,000 is not stiff enough".

Don Allen, Montana Wood Productions Association, testified in support of SB 211. The "real answer" to protecting water quality is education, Allen said, which is an ongoing process. Because education does not "get everyone's attention," the penalty tool would be the second choice of effectiveness, Allen said.

Stuart Doggett, Montana Mining Association, supported SB 211. Doggett said the mining association would like to see those people penalized who do not comply with current standards of water quality.

Opponents' Testimony:

There were no opponent's to SB 211.

Questions From Committee Members:

Senator Keating asked John Keenan if there was a scale within the codes that would determine the fine to be levied? Keenan stated there wasn't a section devoted to what the level of the fine should be. What is done, Keenan told the committee, is to file civil complaints which seek the maximum penalty per day, "in many cases". Most of these claims, Keenan said, are settled out of court.

Senator Bengtson asked how much money was in the EQPF and what this money has been used for. Keenan said he did not know the amount currently in the EPA fund, but offered to find out for the

committee.

Senator Grosfield asked John Keenan, DHES, how fines were determined. Keenan stated that probably every defendant was confronted with a civil complaint which requested the statutory maximum. Most of these cases, however, were settled out of court for less than the maximum. Grosfield told the committee that he was "uneasy" that there weren't guidelines for degrees of violations. Grosfield said he would like to see the adoption of guidelines for fine levying. Keenan added that violations are determined by initially taking a water sample on a daily and then weekly basis. When this water analysis shows a violation has occurred, the potential for seeking a penalty for that violation would be present, Keenan said. Rarely is there a penalty assessed on the basis of one violation, said Keenan, except perhaps in the case of too much Phenol, oil or grease being discharged into a river on a daily basis.

Closing by Sponsor:

Senator Harp offered no closing statements on SB 211.

HEARING ON SB 245

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, presented SB 245 to the committee. This bill, Nathe said, is an act exempting from underground storage tanks regulations those tanks used for storing heating fuels.

Proponents' Testimony:

Pat Smith, tribal attorney for the Federated Kootenai and Salish Tribes, told the committee that the tribes supported both of Senator Nathe's underground storage tank bills (SB 245 and 247) because of a controversy that has arisen on reservations in the last six months. Last summer the tribes received a letter from the Department of Health requesting they pay the registration fees for underground storage tanks, Smith said. A decision was made by the Department of Health at that time, that they did have jurisdiction on tribal and Indian lands. As a consequence, a notice went out to all fuel vendors not to fill any tanks unless they had state tags. This created a problem for those tanks situated on tribal lands that were not tagged because "we did not want to forfeit our jurisdiction to have these tanks filled," Smith added. A remedy was sought in tribal court and the attorney general was contacted to resolve the problem. There is an effort currently underway, Smith said, to resolve the problem by June 15. Because the EPA has jurisdiction on underground storage tanks on tribal lands, we support Senator Nathe's approach to having UST guidelines more consistent with the EPA, Smith concluded.

ROLL CALL

Natural Resources COMMITTEE

DATE 2-8-91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi	✓		
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz			✓

Each day attach to minutes.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-8-91
BILL NO. SB 211

STATE OF MONTANA
DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES

MONTANA WATER QUALITY ACT
SECTION 75-5-631 MCA
CIVIL PENALTIES COLLECTION SUMMARY
1976-1990

During the period of this summary, the Department has collected civil penalties pursuant to the Montana Water Quality Act (75-5-631 MCA) in the amount of $443,100 from sixty (60) defendants in civil court action.

Over the last ten year period the total collections per year are:

1990----------$72,000
1989----------$49,400
1988----------$29,100
1987----------$28,500
1986----------$17,000
1985----------$24,250
1984----------$34,250
1983----------$19,000
1982----------$ 2,000
1981----------$15,750

The ten year average penalty collection is $29,125 per year.

prepared by: Kevin Keenan, WQB-DHES 1-30-91

EXHIBIT 2
DATE 2-8-91
SB 211

SENATE BILL 211
Proposed Amendments From Montana Trout Unlimited

At p. 2, line 13, strike everythings from "fines " through "fund" on line 14, and insert "DISPOSITION OF FINES AND CIVIL PENALTIES."

At p. 2, line 14, Strike "fines", and insert "(1) EXCEPT AS PROVIDED IN SUBSECTIONS 2 AND 3, FINES AND CIVIL PENALTIES"

At p. 2, line 16, strike everything from "environmental" through "75-10-704", and insert "WATER QUALITY REHABILITATION ACCOUNT PROVIDED LN [SECTION 1 OF HB 414, LC 0504]."

At p. 2, line 17, insert "(2) A MAXIMUM OF $20,000 IN FINES AND CIVIL PENALTIES MAY BE DEPOSITED IN THE WATER QUALITY REHABILITATION ACCOUNT IN ANY FISCAL YEAR. FINES AND PENALTIES IN EXCESS OF $20,000 MUST BE DEPOSITED IN THE GENERAL FUND. "

(3)WHENEVER THE AMOUNT OF MONEY IN THE WATER QUALITY REHABILITATION ACCOUNT EXCEEDS $100,000, ALL SUBSEQUENT FINES AND CIVIL PENALTIES MUST BE DEPOSITED IN THE GENERAL FUND."

At p. 2, line 20, before "In", insert "(1)"

At p. 3, on line 2, strike everything from "Costs" through "75-10-704" and insert (2) "ANY COSTS AND EXPENSES RECOVERED BY THE DEPARTMENT UNDER SUBSECTION 1 ACTIONS THAT THE DEPARTMENT FINANCED WITH MONEY FROM THE WATER QUALITY REHABILITATION ACCOUNT IN [SECTION 1 OF HB414/LC0504] MUST BE DEPOSITED IN THE WATER QUALITY REHABILITATION ACCOUNT.

At p. 3, line 6, strike section 5 in its entirety.

CHAIRMAN--BOB RANEY
SECRETARY-LISA FAIRMAN
NORMAL SCHEDULE==> SITE: ROOM 317 DAYS: TU,TH TIME: 3:00 P.M.

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0018	2/01	2/11		CONCUR AS AMENDED		3/13
GAGE, DEL			REVISE OIL AND GAS LAWS; AUTHORIZE CERTAIN POOLING AND UNIT AGREEMENTS			
SB0094	2/18	3/12		CONCUR AS AMENDED	TAXATION	3/13
BECK, TOM			ESTABLISH GROUND WATER CHARACTERIZATION AND MONITORING PROGRAMS			
SB0099	3/04	3/19		CONCUR AS AMENDED		3/21
HARP, JOHN			PROVIDE A PREFERENCE FOR PRIVATELY OPERATED SOLID WASTE MANAGEMENT SYSTEMS			
SB0114	2/12	3/12		TABLED ON 03/12		
WEEDING, CECIL			LOCAL REFERENDUM ON SITING OF A MEGALANDFILL			
SB0136	3/04	3/14		CONCUR AS AMENDED		3/15
BECK, TOM			PROVIDE FOR ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS			
SB0139	2/01	2/11		CONCUR		2/12
GROSFIELD, LORENTS			AUTHORIZE CONSERVATION DISTRICT SUPERVISORS TO INVEST ALL SURPLUS FUNDS			
SB0165	2/12	3/06		CONCUR		3/13
HARP, JOHN			INCREASE MAXIMUM ASSESSMENT IN FOREST LAND FIRE PROTECTION DISTRICTS			
SB0189	3/04	3/19		CONCUR AS AMENDED		4/03
BECK, TOM			GENERAL REVISION OF LOCAL GOVERNMENT SOLID WASTE MANAGEMENT LAWS			
SB0195	3/04	3/14		CONCUR AS AMENDED	RULES	4/02
BENGTSON, ESTHER			DEFINE WATER USER ENTITY			
SB0209	3/04	3/19		CONCUR AS AMENDED		3/20
YELLOWTAIL JR., BILL			REQUIRE SOLID WASTE MANAGEMENT SYSTEM BE LICENSED ANNUALLY BY DHES			
SB0211	3/04	3/14		CONCUR AS AMENDED		4/02
HARP, JOHN			INCREASE MAXIMUM PENALTIES FOR WATER QUALITY ACT VIOLATIONS			

provided in permit review, under the Water Quality Act, and permits handled by other state agencies. **Mr. Brown** wanted to establish an appeals procedure, which is provided for under amendment No. 11.

REP. O'KEEFE said the committee adopted the amendments already, but in language submitted in draft form. This enables the committee to re-adopt the amendments in the proper language and insert them in the proper place in the bill.

Ms. Kuntz said a question was raised about the time frame for the Department to adopt rules. In his set of amendments, **Mr. Brown** proposed elimination of the immediate effective date to allow the bill to go into effect in October this year. She discussed the matter with **Greg Petesch, Legislative Council Code Commissioner.** He recommended the committee add an applicability section to the bill to say DHES is authorized to begin rule making immediately, but rules would not be effective until October 1. That would address these concerns.

REP. O'KEEFE said he talked to **Mr. Brown** about the effective date but not the applicability option. An immediate effective date is not needed to begin drafting rules. It may be better to adopt these amendments and the applicability language. That would allow the Department to immediately begin drafting rules and make the bill effective upon the approval of the rules, rather than October 1. They may get the rules done earlier or after October 1. This will ensure the Department won't be charging fees prior to rule adoption.

Vote: Motion to amend HB 718 carried unanimously.

Motion: REP. O'KEEFE moved to adopt approval of applicability language, which allows the Department to begin adopting rules immediately and makes the bill effective upon final approval of the Board of Health rules.

Discussion: REP. DOLEZAL asked if this will slow down the rule-making process. He asked what would stop the Board from dragging its feet if a deadline is not established. **REP. RANEY** asked **REP. O'KEEFE** how he felt about having the bill become effective Oct. 1, 1991, or upon completion of the rules. **REP. O'KEEFE** agreed.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTION MOTION THAT HB 718 BECOME EFFECTIVE OCT. 1, 1991, OR UPON COMPLETION OF THE RULES. Motion carried unanimously.

Motion/Vote: REP. O'KEEFE MOVED HB 718 DO PASS AS AMENDED. Motion carried unanimously.

HEARING ON SB 211

Presentation and Opening Statement by Sponsor:

SEN. JOHN HARP, SD 4 in Kalispell, said SB 211 increases the maximum civil penalties for water quality violations from $10,000 to $25,000. Originally the bill was simple. The intent was to increase the maximum civil penalty. DHES could ask district courts to hold people responsible for violating provisions of the Montana Water Quality Act. There were substantial amendments by the Senate Natural Resources Committee. They changed the concept of the bill, which is now in conflict. DHES has some amendments to offer.

Proponents' Testimony:

Kevin Keenan, Enforcement Officer for DHES' Water Quality Bureau, said the Department supports SB 211 with amendments mentioned by **SEN. HARP.** The amendments are designed to clarify the difference between judicial and administrative penalties. He reviewed the amendments. **EXHIBIT 2**

Stan Bradshaw, Montana Trout Unlimited, offered amendments. **EXHIBIT 3** He said SB 211 resembles HB 414, which was introduced by **REP. COHEN,** passed out of this committee, and is headed to the Appropriations Committee. In SB 211, civil penalties are being increased to $25,000 and the money is going into the Environmental Quality Protection Fund. HB 414 assesses the same penalty that is already in place, $10,000, but earmarks up to $20,000 per year for a Water Quality Rehabilitation Fund for emergency water pollution events. The rest of the money would go into the General Fund. The two bills are trying to do different things with the same pot of money. He stated that he wasn't sure which is more appropriate, although Cohen's bill is more appealing. The Water Quality Bureau supports both. Trout Unlimited's amendments would turn **SEN. HARP's** bill into **REP. COHEN's** bill, but with a $25,000 penalty instead of $10,000. He also supports Water Quality Bureau amendments.

Richard Parks, Northern Plains Resource Council (NPRC), said NPRC concurs with amendments supported by the Department and Trout Unlimited. He urged support of SB 211.

Opponents' Testimony: None.

Questions by Committee Members:

REP. RANEY said **Mr. Keenan** would answer questions on behalf of **SEN. HARP,** who had to leave the hearing.

REP. COHEN asked if **SEN. HARP** was proposing one bill or the other, or if he wanted to coordinate them. **Mr. Keenan** said he thought **SEN. HARP** felt they needed to be combined. **REP. COHEN** asked **Mr. Keenan** if he looked at the possibility of combining them. **Mr. Keenan** said no. **REP. COHEN** asked if the Environmental Quality Protection Fund already exists. **Mr. Keenan** said yes.

REP. COHEN said the fund he was creating with his bill would

require a loan from appropriations. The bill was sent to Appropriations so the two bills could be coordinated when **SEN. HARP's** bill arrived. He asked if that sounded appropriate, or if this committee should do it. **Mr. Keenan** said he wasn't the person to answer the question. **REP. COHEN** asked **Mr. Keenan** if he could determine how the two bills could work together. **Mr. Keenan** said yes.

REP. FOSTER asked **Mr. Keenan** if he knew **SEN. HARP's** opinion on amendments proposed by Trout Unlimited. **Mr. Keenan** said he would have to talk to the bills' sponsors to see what possibilities exist to combine the two bills. There is general agreement on the intent.

REP. COHEN asked if SB 211 caps the Environmental Quality Protection Fund or if it can continue to grow. His bill would have money above a certain level revert to the General Fund. He asked if any money in SB 211 will revert to the General Fund. **Mr. Keenan** said SB 211 does not cap the Environmental Quality Protection Fund. It would continue to grow, except for the amount used by the Department each year.

Closing by Sponsor: **REP. RANEY** said no one was available to close on the bill.

HEARING ON SB 136

Presentation and Opening Statement by Sponsor:

SEN. THOMAS BECK, SD 24 in Deer Lodge, said SB 136 would allow creation of local water quality districts. It spells out the voting procedure on how they can be established and what they can do. A number of amendments have been put into the bill that concur with almost everyone who was involved with the bill. A major hearing was held before its introduction in the Senate. The bill would give local governments authority to establish rules, through water districts, to clean up and control water pollution in their areas.

Proponents' Testimony:

Jim Carlson, Director of the Environmental Health Division of the Missoula City-County Health Department, testified in support of SB 136. He read letters of support from the **Missoula Chamber of Commerce, Missoula County Board of Commissioners and Missoula Water Quality Advisory Group.**
EXHIBIT 4

Will Selser, Executive Director of the Lewis and Clark City-County Health Department, said he also was testifying on behalf of the **Butte-Silver Bow and Gallatin city-county health departments.** He said these counties have potential threats to their aquifers. They support SB 136 because they do not want to get into the position Missoula is in. SB 136 is a consensus bill.

REP. RANEY said the language will be inserted in the statement of intent section of the bill.

Vote: Motion to amend SB 136 carried unanimously.

Motion: **REP. TOOLE** moved to amend SB 136. **EXHIBIT 6**

Discussion: **REP. RANEY** said the amendment was proposed by the city of Missoula and addresses the 4.5 mile limit.

REP. WANZENRIED said the Lewis and Clark County Board of Health opposes the amendment. **REP. O'KEEFE** stated that he doesn't like the amendment unless it gives the county the same kind of approval over the city. The committee is establishing governmental agreements. There is room to participate and negotiate in this bill. He doesn't see the need for the amendment. The fact that it was killed in the Senate and in the subcommittee that worked on the bill indicates there is a lot more opposition to it. The bill is a good compromise and should be left alone.

REP. ELLISON said he agrees. All the amendment will do is get this bill into a conference committee. **REP. FAGG** said he agreed.

Vote: Motion carried unanimously.

Motion/Vote: **REP. O'KEEFE MOVED SB 136 BE CONCURRED IN AS AMENDED.** Motion carried unanimously.

REP. RANEY said **REP. WANZENRIED** would carry SB 136.

EXECUTIVE ACTION ON SB 195

Discussion: **REP. O'KEEFE** said he would like to move to table the bill because SB 195 language was included in **REP. GILBERT's** subdivision bill.

REP. RANEY said he wouldn't have a problem taking the bill back off the table if it is needed. He reiterated that SB 195 language is in **REP. GILBERT's** bill.

Motion/Vote: **REP. O'KEEFE MOVED SB 195 BE TABLED.** Motion carried unanimously.

EXECUTIVE ACTION ON SB 211

Discussion: **REP. COHEN** said he would like to wait on the bill. He spoke to **Steve Pilcher, DHES Environmental Sciences Division Administrator,** and others in Water Quality. They are working on some coordinating amendments for the committee. **REP. RANEY** agreed to wait.

EXECUTIVE ACTION ON SB 265

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

Proposed Amendments to Senate Bill 211
Third Reading Copy
Montana Department of Health and Environmental Sciences

Presented to House Natural Resources Committee
March 14, 1991

1. Page 1.
Following: line 12
Insert: "STATEMENT OF INTENT

A statement of intent is provided for this bill because the legislature desires that the department of health and environmental sciences develop penalty guidelines which ensure that the civil penalty provided under Section 75-5-631 is fairly applied to all persons against whom the department initiates proceedings under Title 75, chapter 6. The legislature recognizes that the department may in its initial filings seek the maximum penalty of $25,000 for each day of violation. However, the legislature emphasizes that the actual amount that may be reached in a settlement should reflect the factors listed in Section 75-5-631(4) and that these factors should be applied uniformly to all violators.

While this act does not direct rulemaking as a vehicle for ensuring uniform application of the factors stated in Section 75-5-631(4), the legislature anticipates that the department will develop detailed enforcement guidelines that describe a process for applying the factors to each violator. These guidelines should include guidance concerning the amount for inclusion in a civil complaint and, more importantly, a format for determining an equitable settlement value. The format might include a clear and concise description of penalty settlement ranges by type of violation. Finally, the Legislature anticipates that these guidelines may be completed by October 1, 1991."

2. Page 2, lines 1 and 2.
Strike: "IN" on line 1 through "TO" on line 2
Insert: "When seeking penalties under"

3. Page 2, line 3.
Following: "ACCOUNT"
Insert: "the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint"

4. Page 2, lines 7 and 8.
Strike: "THE DEGREE OF CULPABILITY"

5. Page 2, line 8.
Strike: "OF"
Insert: "or"

6. Page 2, lines 11 through 25.
Strike: subsections (5) and (6) in their entirety

Summary of Amendments Proposed for Senate Bill 211
Third Reading Copy
Montana Department of Health and Environmental Sciences

Amendments 2 and 3: Would ensure that the factors listed in Section 1(4) are factors for consideration in reaching a settlement, and not for ascertaining the amount to be requested in a civil complaint.

The factors include the nature and extent of the violation and characteristics of the violator (e.g., the violator's ability to pay and the money saved by the violator because of his noncompliance).

> Comment: The Department feels that the bill as currently amended would essentially require the insertion of a settlement figure in the complaint. The problems with this approach include:
>
> (a) the Department may not know its settlement value until it is well into formal discovery; and
>
> (b) the Department is placed in an inequitable bargaining position. Either the Department becomes inflexible and holds to the complaint value (i.e., our settlement bottom line) or settles for a value that is below the bottom line. The former position would likely result in more trials.

Amendments 4 and 5: Would make minor changes to the factors to be considered by the Department. Amendment 4 removes the specific attention given to the violator's degree of culpability, largely because this factor is more important in criminal rather than civil matters. Amendment 5 corrects a technical error, by changing "of" to "or".

Amendment 6: Would strike section 1(5) and (6), thereby removing the rulemaking requirement.

Amendment 1: Would add a statement of intent that requests the department to develop enforcement guidelines by the effective date of the bill.

> Comment: This is strongly preferred to rulemaking. Because of the variety of factual situations associated with Water Quality Act violations, it may be nearly impossible to draw categories that fairly address every possible violation. The use of guidelines acknowledges the fact-specific situations that may not fit. The guidelines approach also parallels the approach used by the EPA for judicial actions.

EXHIBIT 3
DATE 3-14-91
SB
HB 211

SENATE BILL 211
Proposed Amendments of Montana Trout Unlimited
March 14, 1991

At Page 3, line 13:
Strike everything from "fines" through "fund" on line 14
Insert "Disposition of Fines and Civil Penalties."

At page 3, Line 14:
Strike "fines"
Insert "Except as provided in subsections (2) and (3), fines and civil penalties"

At page 3, line 16:
Strike everything from "envorinmental" through "75-10-104",
Insert "water quality rehabilitation account provied in (section 1 of HB 414, LC 0504]."

At page 3, line 17:
Insert "(2) A maximum of $20,000 in fines and civil penalties may be deposited in the water quality rehabilitation account in any fiscal year. Fines and penalties in excess of $20,000 must be deposited in the general fund.

(3) Whenever the amount of money iln the water quality rehabilitation account exceeds $100,000, all subsequent fines and civil penalties must be deposited in the general fund."

At page 3, line 20, before "in ", insert "(1)"

At page 4, line 2:
Strike everything from "costs" through "75-10-704"
Insert "2) any costs and expenses recovered by the department under subsection 1 actions that the Department financed with money from the water quality rehabilitation account in [Section 1 of HB 414 / LC 0504] must be deposited in the water quality rehabilitation account."

At page 4, line 6:
Strike all of section 5.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 211

DATE 3/14/91 SPONSOR(S) Sen. Harp - Water Quality Act violations

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTU	✓ w/amendments	
Kevin Keenan	Mt Dept Health	w/Amend	
Richard Parks	MPAC	w/amend	
Don Allen	MWPA	✓	
Jack Brenna	MARA	✓	
Stuart Doggett	MT Mining Assoc.	✓	
Donald Peoples	self	✓	
David Gilbert	self	✓	
Jim Jensen	MEIC	✓ w/ Amend.	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.